

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CASE NO. 6:11-cr-042-LED-JDL
	§	
DWIGHT ANTHONY MCKINLEY	§	

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On October 17, 2012 the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Dwight Anthony McKinley. The government was represented by Richard Moore, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk.

Defendant originally pled guilty to the offense of Conspiracy to Possess with Intent to Distribute Hydrocodone and Marijuana, a Class C felony. The offense carried a statutory maximum imprisonment term of 10 years. The United States Sentencing Guideline range, based on a total offense level of 13 and a criminal history category of IV, was 24 to 36 months. District Court Judge Leonard Davis sentenced Defendant to 30 months imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosures and substance abuse testing and treatment. On March 22, 2013, Defendant completed the term of imprisonment and began his term of supervised release.

In its petition, the government alleges that Defendant violated his terms of supervised release on May 23, 2013 by submitting a urine specimen that tested positive for hydrocodone and marijuana, on September 30, 2013, by submitting a urine specimen that tested positive for cocaine and marijuana, and on October 21, 2013, when the Defendant submitted a urine

specimen which tested positive for marijuana. Under the terms of supervised release, Defendant was prohibited, in relevant part, from possession or use of any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing cocaine¹ after submitting a urine specimen which tested positive for cocaine and marijuana on September 30, 2013, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). The government represents that Fifth Circuit case law permits a court to find that illicit drug use constitutes possession. Upon a finding of a Grade B violation, the Court shall revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations set forth above. The government recommended 12 months and 1 day imprisonment, with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Dwight Anthony McKinley be committed to the custody of the Bureau of Prisons for a term of imprisonment of 12 months and 1 day, with no supervised release to follow. The Court further **RECOMMENDS** that the place of confinement be FCI Texarkana.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to Chief District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 12th day of February, 2014.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

¹ Such an offense is a violation of Texas Health and Safety Code § 481.115.